

IN THE HIGH COURT OF UTTARANCHAL

**AT NAINITAL.
A.O. No. 179/2001
(Old No. 68/1993)**

State of U.P. through Executive Engineer,
Temporary Division, P.W.D., Berinag,
District Pithoragarh Appellant.

Vs.

1. Smt. Parvati Devi W/o late Anand Singh Pathani
2. Rakesh Singh
3. Shailendra Singh,
Both sons of late Anand Singh Pathani
4. Km. Renu
5. Km. Kavita
D/o late Anand Singh Pathani
All R/o Village Gwari Patti Gwari
Tehsil Gangoli Hat District
Pithoragarh Respondents.

Sri J.P. Joshi, learned Standing Counsel for the Appellant.
Sri R.K. Nautiyal, learned counsel for the respondents.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 39 of the Arbitration Act, 1940, has been preferred by the State of U.P. against the judgment and decree dated 28-5-1992 passed by the District Judge, Pithoragarh, in Civil Suit No. 9 of 1991, Anand Singh Pathani Vs. State of U.P., rejecting the defendant's application U/S 30 of the Arbitration Act for setting aside the award and making the award rule of the court.

2- The relevant facts of the case, in short, are that a dispute arose between the plaintiff Anand Singh and the State of U.P. pertaining to agreement No. 7/EE, dated 5.2.1985 which was for toll collection on Sarju Bridge at Seraghat situate at 227 Kms. of Karanprayag-Askote Motor Road in District Pithoragarh. Per condition of agreement the dispute was referred to the Arbitrator. The Arbitrator proceeded with the matter and gave his award dated

23.1.1991. Thereafter the award was sought to be made rule of the court in Civil Suit No.9 of 1991. Notices were issued to the parties.

3- The plaintiff-respondent raised objection that the findings of the Arbitrator regarding the delayed 22 instalments are not correct and that amount should also be ordered to be paid to him. The plaintiff also pleaded that the rate of interest awarded by the Arbitrator was low. Cost of the suit was also claimed by him.

4- The Defendant-appellant, State of U.P. filed objections that the Arbitrator has failed to consider the counter claims of the State of U.P. but has made his award only in respect of the claim preferred by the claimant. It was also asserted that the Arbitrator has not given any reason with regard to the finding arrived at by him in the award and the interest made by the arbitrator to the contractor was without any agreement and hence the award was bad in law and deserved to be set aside.

5- On the pleadings of parties, the District Judge framed the following issues in the case:-

1- Whether there is any ground to modify, remit or set aside the award keeping in view the provisions of the arbitration Act, 1940?.

2- What relief is capable of being granted to any of the parties?.

6- The trial court after hearing learned counsel for the parties and perusing the pleadings, decreed the suit in terms of Award dated 23-1-1991 and made the award rule of the court, vide impugned judgment and decree dated 28-5-1992.

7- Feeling aggrieved, the State of U.P. has preferred this appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

8- Heard learned counsel for the parties and perused the material available on record.

9- The learned Standing Counsel has submitted that the court below committed error in not appreciating that the Arbitrator had misconducted himself, as the finding recorded by him, while giving award is against the terms and conditions of the lease agreement as well as the documents filed in support of the claim.

10- Perusal of the record reveals that lease agreement between the State of U.P. and the contractor was for collection of toll on Sarju Bridge at Sheraghat in Km. No. 227 of Karanprayag-Askote Motor Road in District Pithoragarh. The dates of start and completion as per the agreement were 5-2-85 and 4-2-88 respectively. The contractor had to pay a sum of Rs. 5,800/- on the first day of every month as monthly instalment during the currency of lease agreement to the E.E., Temporary Division, P.W.D. Bearing and in case of non-payment of instalment within one week of the due date, the contractor was liable to pay to the Department compensation @ 1% along-with the instalment. When the agreement was in operation, the contractor wrote letter dated 23-8-86 to the Commissioner, Kumaon Mandal, Nainital wherein he alleged that the Department had started new corner cutting in the entire length of the above road, resulting in road closure from time to time and created hindrance in toll collection and he requested for exemption from depositing remaining instalments. The Commissioner, Kumaon Mandal, Nainital vide his office letter No. R-7171/34-1, dated 26-8-86, referred the matter to the arbitrator as per the conditions of lease agreement. The department did not agree to the allegations made by the contractor and insisted on the recovery of remaining six instalments and 1% compensation on the 22 delayed instalments. Before the arbitrator in spite of number of dates given for hearing, nobody turned-up from the side of the department and no proof and documents were produced by the department.

11- The plaintiff-respondent has specifically pleaded that the road remained closed for certain period. To rebut this fact no evidence whatsoever has been produced on behalf of the State/appellant before the Arbitrator, hence the claim of the plaintiff was accepted that the road for traffic remained closed for five months and the contractor is entitled to get the exemption from depositing five instalments, but he is liable to pay remaining one instalment along with compensation @ 1% and also due to delayed submission of 22 instalments, he is liable to pay compensation to the department @ 1% as per the conditions of lease agreement. The arbitrator, therefore, held that the contractor is entitled to get the exemption from depositing five instalments for 150 (5 months) the closure period. The plaintiff was held liable to pay remaining one instalment of Rs. 5,800/- with Rs. 701/- as compensation to the department. The contractor was further held liable to pay compensation for 22 delayed instalments to the Department, which comes to Rs. 15,422/-. Further the contractor was found entitled to get the refund of balance security amount of Rs. 15,677/- along with simple interest @ 6% per annum on this amount less the interest, if any, earned during this period. However, the contractor was not found entitled to any other compensation or relief and parties were to borne their own cost of arbitration proceedings. Thus it is clear that the Arbitrator has recorded the above finding as per the material available on record and in accordance with the terms of the agreement and he had not misconducted himself while recording his finding. The submission raised by the learned counsel for the appellant has no substance and is hereby rejected.

12- Learned Standing Counsel also urged that the Arbitrator has not given sufficient opportunity to the defendant/department to participate in the arbitration proceedings.

13- This submission of the learned Standing Counsel has also got no force. Perusal of the record reveals that in spite of sufficient opportunity given to the department, nobody turned

up on behalf of the department and no proof or document was filed in support of the allegations, and it cannot be an excuse that the counsel of the defendant was already engaged in two other arbitration cases at Dehradun, hence instant arbitration proceedings were not represented.. Therefore, it is amply proved that the arbitrator had not mis-conducted himself by not providing sufficient opportunity to the department.

13- For the reasons aforesaid, I am of the view that the trial court was justified in not interfering with the award dated 23-1-1991 and making it a rule of the court.

14- The appeal being devoid of merit is liable to be dismissed.

15- Accordingly the appeal is dismissed. The impugned judgment and decree dated 28-5-1992, is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.)

Dated: 19-12-2006
ISB